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Decision

Initial Assessment: AJTZP, RAID, PILC complaint to the UK NCP about Glencore UK Ltd.

Published 22 January 2021

Contents

[Summary of the UK NCP decision](#)

[Substance of the complaint](#)

[OECD guidelines for multinational enterprises provisions cited](#)

[The Initial Assessment process](#)

[UK NCP decision](#)

[Next steps](#)



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This statement was published on 15 January 2021 by UK National Contact Point (UK NCP) for the OECD guidelines for multinational enterprises.

Summary of the UK NCP decision

The complainants are:

- Rights and Accountability in Development (RAID)
- Association des Jeunes Tchadiens de la Zone Pétrolière (AJTZP)
- Public Interest Law Center (PILC)

The complainants allege that Glencore UK has, either directly or through its business relationship with PetroChad (Mangara) (PCM), failed to conduct appropriate environmental and human rights due diligence in relation to wastewater leaks and an alleged oil spill at the Badila Oilfield in Chad. The complainants also allege that the company has not meaningfully engaged with the local communities, has not contributed to the communities' sustainable development, nor effectively disclosed information affecting the communities.

The UK National Contact Point (NCP) for the [OECD guidelines for multinational enterprises \(the Guidelines\)](https://www.oecd.org/corporate/mne/) (<https://www.oecd.org/corporate/mne/>) has decided that issues relating to the 2018 wastewater spill and subsequent alleged oil leak merit further examination.

The UK NCP has decided not to accept any issues relating to the 2020 wastewater spill for further examination. Whilst the complainants have provided information regarding the 2020 wastewater spill, investigations in relation to this event are ongoing.

This Initial Assessment decision is made on the basis of the information provided by the parties. The decision to further examine aspects of the complaint is not a finding against the company and does not mean that the UK NCP considers the company has acted inconsistently with the Guidelines.

The UK NCP will now offer the parties an opportunity to mediate. If the parties do not want to mediate or cannot reach an agreement, the UK NCP will examine further the claim about whether the company's actions and policies are consistent with the Guidelines.

Substance of the complaint

1. The complaint, raised on Thursday 10 September, to the UK NCP is made by Rights and Accountability in Development (RAID), Association des Jeunes Tchadiens de la Zone Pétrolière (AJTZP), and the Public Interest Law Center (PILC) (the complainants). RAID is a non-Governmental organisation (NGO) based in the UK. AJTZP, a NGO, and PILC, a law firm, are both based in Chad.
2. The complaint is raised about Glencore UK. Glencore UK is a UK company, registered in the United Kingdom. It is part of Glencore Plc which is domiciled in Switzerland. Glencore UK, who are based in London, provide technical planning, financial and other corporate services to PCM which is also subsidiary of Glencore Plc.
3. The complainants submit that Glencore UK Ltd, either directly or through its business

relationship with PCM, has breached the Guidelines.

4. The complainants allege that Glencore UK is in breach of several requirements of the Guidelines, under chapters II. General Principles, III. Disclosure, IV. Human Rights, and VI. Environment

5. The complaint relates to two different sets of events at the Badila oilfield in Chad:

I. In September 2018, the earth bank supporting a wastewater basin collapsed which spilled wastewater into the Nya Pende River. Two weeks later it is alleged that the oil feeder pipe leading from the Badila oilfield to the main Chad-Cameroon pipeline leaked crude oil and needed to be repaired. During this time it is alleged that local residents reported suffering physical injuries, as well as death of local livestock and fish in the Nya Pende River.

II. In July 2020 another wastewater spill occurred at the Badila oilfield, consisting of wastewater spilling into nearby Melom village, flooding farmland, and allegedly flooding houses and contaminating the village well.

6. The complainants say that Glencore UK should address these issues by, amongst other things: commissioning an independent investigation into the wastewater spill and subsequent alleged oil leak in 2018 and the second smaller wastewater spill in 2020, providing redress and remedy for medical expenses to those individuals with injuries, and remedying any environmental damage.

7. Glencore UK accepted an invitation from the UK NCP to respond to the complaint for the purposes of the Initial Assessment stage, reserving its rights to respond in more detail if the complaint was accepted. Glencore UK has neither confirmed nor denied its connection with the claims made by the complainants.

8. Glencore UK have raised that PCM, rather than Glencore UK, had the first-hand knowledge of the issues as they arose and have already made a considerable effort to respond to the complainants' concerns.

9. Additionally, Glencore UK queried whether AJTZP fully represent the local community.

10. The Initial Assessment decision is made on the basis of the information provided by both parties. The decision to further examine the claims about Glencore UK's conduct is not a finding against the company.

11. The UK NCP will now offer the parties mediation. If the parties do not want to mediate or cannot reach an agreement, the UK NCP will examine further the claims about the company's conduct in order to reach a finding as to whether the company breached the Guidelines.

OECD guidelines for multinational enterprises provisions cited

The complainants refer to the following provisions of the Guidelines:

II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

1) Contribute to economic, environmental and social progress with a view to achieving sustainable development

2) Respect the internationally recognised human rights of those affected by their activities.

4) Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.

6) Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.

10) Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

14) Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

III. Disclosure

1) Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2) Disclosure policies of enterprises should include, but not be limited to, material information on:

a) the financial and operating results of the enterprise;

b) enterprise objectives;

c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;

d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;

e) related party transactions;

f) foreseeable risk factors;

- g) issues regarding workers and other stakeholders;
 - h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.
- 3) Enterprises are encouraged to communicate additional information that could include:
- a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines;
 - b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
 - c) its performance in relation to these statements and codes;
 - d) information on internal audit, risk management and legal compliance systems;
 - e) information on relationships with workers and other stakeholders.
- 4) Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- 5) Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
- 6) Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

VI Environment:

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

- 2) Taking into account concerns about cost, business confidentiality, and the protection of

intellectual property rights:

a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environmental, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and

b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation

3) Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

4) Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

5) Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities

The Initial Assessment process

12. The Initial Assessment process is to determine whether the issues raised merit further examination. It does not determine whether the company has acted consistently with the Guidelines.

13. The OECD's procedural guidance for NCPs state that generally issues are dealt with by the NCP of the country in which the issues have arisen. When an issue arises in a non-adhering country (in this instance, Chad) the NCP of the country where the multinational enterprise is based can deal with the complaint. In this instance the UK NCP will deal with the complaint about Glencore UK.

14. The UK NCP notes that Glencore UK is part of Glencore Plc which is incorporated in Jersey and domiciled in Switzerland. Although the complaint is about Glencore UK, the UK NCP informed the National Contact Point of Switzerland (the Switzerland NCP) about the complaint and gave it the opportunity to provide information. This is in line with the OECD's Guide for National Contact Points on Coordination when handling Specific Instances.

UK NCP handling process

Date	Action
10 September 2020	The UK <u>NCP</u> received the complaint
10 September 2020	The UK <u>NCP</u> acknowledged receipt of the complaint by return email to the <u>complainants</u> and informed them that they will be in touch regarding handling
14 September 2020	The UK <u>NCP</u> emailed Glencore UK seeking an appropriate person to respond to complaint
17 September 2020	The UK <u>NCP</u> sent the complaint to Glencore UK
23 September 2020	The UK <u>NCP</u> is contacted by Glencore, acknowledging receipt of the complaint, and asking for a call
28 September 2020	The UK <u>NCP</u> spoke with representatives of Glencore to explain the complaint process
6 October 2020	The UK <u>NCP</u> spoke with representatives of <u>RAID</u> , on behalf of the <u>complainants</u> , to explain the complaint process
14 October 2020	The UK <u>NCP</u> received a letter from Glencore in response to the complaint
15 October 2020	The UK <u>NCP</u> shared Glencore's response with <u>RAID</u>
26 October 2020	The UK <u>NCP</u> spoke to the Switzerland <u>NCP</u> about the complaint
10 December 2020	The UK <u>NCP</u> provided a draft Initial Assessment to the parties and asked for comments
23 December 2020	The UK <u>NCP</u> received comments from both parties in response to the draft Initial Assessment
07 January 2021	The UK <u>NCP</u> shared comments it received with both parties
22 January 2021	The UK <u>NCP</u> published its Initial Assessment

15. All documents provided in the complaint and response were shared with both parties.

16. The UK NCP held a meeting with each party to explain the complaints process. The minutes

of each meeting was shared with each party.

UK NCP decision

17. The UK NCP has decided that some of the issues raised merit further examination.

18. The UK NCP has decided not to accept for further examination any issues around the 2020 wastewater spill, investigations in relation to this event are ongoing.

19. In line with the Guidelines, the UK NCP took the following points into account when considering whether the complainants' concerns merited further examination:

Whether the UK NCP is the appropriate NCP to handle this complaint

20. The UK NCP found it to be appropriate for it to take on the complaint given the company is based in the UK and the complaint relates to alleged actions taken by the company.

21. Glencore UK is a UK company, registered in the United Kingdom. It is part of Glencore Plc which is domiciled in Switzerland. Glencore UK, who are based in London, provide technical planning, financial and other corporate services to PCM which is also subsidiary of Glencore Plc.

Identity of the complainant and their interest in the complaint

22. AJTZP is a local Chadian organisation set up in 2013. It states that it seeks to engage with PCM and Glencore UK about concerns raised by local residents in relation to their operations about issues affecting local residents. Glencore UK disputes that AJTZP was set up to engage with it. AJTZP is being supported with technical and financial support, as well as training, by a Chadian legal firm PILC. RAID is UK based non-governmental organisation (NGO) that has been working with both Chadian organisations since 2019 and supporting them with expert and technical advice and translation.

23. The UK NCP accepts that the complainants have an interest in bringing this complaint in their capacities as civil society organisations. The UK NCP is satisfied that they have a valid interest in the issues raised.

Whether the issue is material and substantiated

24. Within the scope of the Initial Assessment, the complainants have provided sufficient information for the UK NCP to conclude that some of the issues identified merit further examination.

25. The complainants have provided various documents and sources in support of their complaint with regard to the 2018 wastewater spill and the alleged oil leak, including:

- information from local residents about the September 2018 wastewater spill and alleged oil leak, and the impacts on the local community, namely physical injuries, death of livestock and fish, damage to crops and farmland
- in-depth narratives on individual cases
- photographs of the September 2018 wastewater spill

- Glencore UK's results from its 10 September 2018 wastewater test
- a wastewater report by Ecofilae, commissioned by the Chadian Ministry of Energy and Petroleum in 2018 and showed that the water tested was unfit for consumption by humans or animals
- the complainants' correspondences with Glencore UK which demonstrates the steps PCM took to reduce the pressure on the basin, and to pump water from the cisterns

26. The UK NCP notes that whilst the complainants have provided information regarding the 2020 wastewater spill, investigations in relation to this event are ongoing and therefore it would be premature to consider the issue material and substantiated.

Whether there seems to be a link between the enterprise's activities and the issues raised

27. Glencore UK states that PCM has primary responsibility for implementing operational activities in Chad, that PCM was responsible for leading the operations leading to the spills and that PCM's personnel were primarily responsible for the response.

28. Glencore UK further states that Glencore Plc sets standards and expectations for behaviours through group policies. They state that PCM is directly responsible for implementing these policies at a local level.

29. However, both parties provide information that links Glencore UK to PCM. For instance, Glencore UK in London provides technical planning, financial and other corporate services support to PCM.

30. The complainants claim that Glencore UK has weekly conference calls with PCM's Health, Safety, Environment and Communities Department. On these calls, the complainants claim that PCM report on issues, and approve action plans and strategies with Glencore UK.

31. The UK NCP understands that Glencore UK is not the parent company of PCM. Both companies have the same parent company, Glencore Plc.

32. The UK NCP considers that the technical planning, financial and other corporate services Glencore UK provides to PCM is sufficient to prove there is a business relationship.

33. The Guidelines under Chapter II. General Policies, A 12. state that enterprises should:

- seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship

Relevance of applicable law and procedures, including court rulings

34. In addition to the Guidelines the complaint includes references to several international instruments including the International Covenant on Economic, Social and Cultural Rights as well as the Universal Declaration of Human Rights.

How similar issues have been, or are being, treated in other domestic or international proceedings

35. The complainants confirm that, to the extent of their knowledge, there are no parallel legal proceedings covering the subject matter of this complaint.

36. The UK NCP notes that Glencore Plc is domiciled in Switzerland. The UK NCP informed the Switzerland NCP about the complaint and they confirmed that they had not received any related information regarding the complaint.

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines

37. The UK NCP's process seeks to provide, through independent mediation, a forum for discussion with a view to resolving the specific issues raised.

38. Glencore UK has raised concerns that any good offices offered by the UK NCP will not facilitate a resolution to the issues raised by the complainants. They argue that there has already been significant correspondence and engagement between them and the complainants regarding the subject of the complaint. Glencore UK notes that PCM has provided information and data to the complainants in relation to the issues in the complaint to substantiate its statements and taken steps to review and, where appropriate, amend its processes.

39. The UK NCP note that there has already been considerable engagement between the parties involved in the specific instance. The UK NCP has considered the information provided by the complainants and believe it would serve the purpose and effectiveness of the Guidelines to further examine the issues within the remits of the Guidelines in order to assist the parties to come to a resolution.

40. The conclusions reached by the UK NCP in this Initial Assessment are based on the information that has been provided by both parties.

Next steps

41. The UK NCP will formally ask the parties whether they are willing to engage in mediation with the aim of resolving the issues. Subject to their response, the UK NCP will liaise with the parties to arrange mediation meetings. If these meetings achieve a resolution, the UK NCP will reflect this in a Final Statement without making a determination on whether the enterprise acted consistently with the Guidelines. If a mediated/conciliated solution is not possible, the UK NCP will conduct a further examination into the issues and will reflect the outcome in a Final Statement that will include a determination on whether Glencore UK acted consistently with the OECD Guidelines.

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